

Docket No.: RPC 0575 PUS
Serial No. 09/921,762

**UNITED STATES PATENT AND TRADEMARK OFFICE
IN THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPELLANT: Justin M. Smyers, et. al EXAMINER: Castellano
SERIAL NO.: 09/921,762 GROUP ART UNIT: 3727
FILING DATE: August 3, 2001
FOR: Stackable Crate
DOCKET NO.: RPC 0575 PUS

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REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellant files this Reply Brief in response to the Examiner's Answer mailed
December 8, 2004.

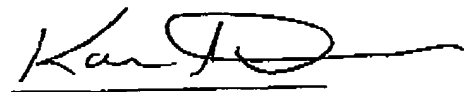
Issues

The issues have been narrowed slightly as follows:

IX) The Examiner has withdrawn his rejection of claim 43 under 35 USC §112.

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the enclosed Reply Brief (7 pages) is being sent via facsimile to (703) 872-9306 on February 8,
2005.


Konstantine J. Diamond

ArgumentI) Anticipation Rejection over Prior Art Figure 1A) Claims 1-4, 32-38 and 40-43

Claim 1 recites, "a first portion of an inner surface of the side wall *at the first distance* from the bottom surface is formed to reduce the dimension of the crate opening in at least one selected area relative to a second portion of the inner surface of the side wall *at the first distance* from the bottom surface." The Examiner only disputes that the independent claims 1, 32 and 35 require that the comparison of the dimensions of the crate opening be done at the same "first distance" from the bottom surface. The Examiner performs a comparison of the dimension of the Prior Art Figure 1 crate opening at two points: the first one at 1 mm below the "first distance" and the second one at 1 mm above the first distance - - in other words, not at the first distance. The Examiner's interpretation of the claim is unreasonable and totally eliminates the "first distance" limitation from the claim. Comparing the dimension of the opening at two points spaced vertically by 2 mm is not a comparison performed "at the first distance."

B) Claims 3 and 4

Claims 3 and 4 require that the "at least one selected area" in which the dimension of the crate opening is reduced comprises "an upper edge of the side wall." The Examiner explicitly reads this claim language as "upper edge *area*" in order to make a comparison of two points vertically spaced by 2 mm, not two points on the "upper edge."

C) Claim 37

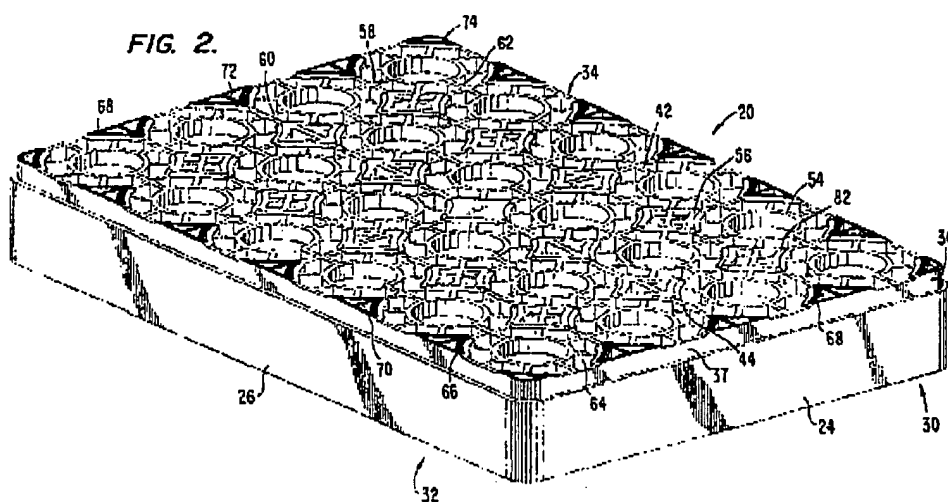
Claim 37 specifies a comparison of the thickness at the first and second portions, both at the first distance from the bottom surface. Prior Art Figure 1 shows constant thickness at

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any given distance from the bottom surface. The Examiner did not argue claim 37 in the Examiner's Answer.

II) Anticipation Rejection over Apps '532

The Examiner has rejected claims 7, 9-11, 30, 44 and 47 as anticipated by Apps '532 (U.S. Patent No. 4,932,532). Figure 2 from Apps '532 is reproduced below:



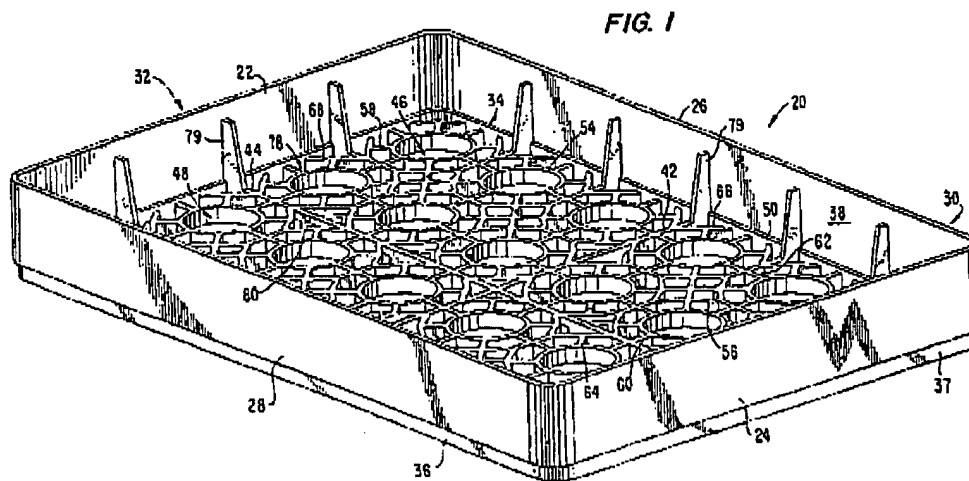
D) and E) Claims 7, 9-11, 30, 44 and 47

Claim 7 recites, "a drag rail protruding from an underside portion of the bottom surface, the drag rail including a drag surface that is the lowermost surface of the crate, wherein an inner surface of the side wall is formed to position at least a portion of the side wall over the drag rail." The Examiner is reading the floor perimeter structure 36 together with redoubt members 66, 68 and redoubt struts 70, 72 (colored above) as the claimed "drag rail." The floor perimeter structure 36 is a rail, but it is not the "lowermost surface of the crate," as claimed. That is why the Examiner argues that the redoubts and redoubt struts are part of the rail.

A rail can have redoubts and redoubt struts connected to it, as does the rail 36 of Apps '532, but connecting them does not make the redoubts or redoubt struts actually *part* of the

rail. A common definition of "rail" is, "A bar extending horizontally between supports, as in a fence." The redoubts and redoubt struts do not extend horizontally between supports. They are only connected to the rail, and project from the rail, but are not part of the rail.

As show in Fig. 1 of Apps '532 below, the posts 79 of Apps '532 are not an "inner surface of the side wall." The Examiner admits that only the posts 79 are positioned over the floor perimeter structure 36. Because there is no inner surface of the side wall positioned over a drag rail, claim 7 is not anticipated by Apps '532.



E) Claims 9-11

For claims 9 and 11, the Examiner unreasonably broadened the claim term "corner" to mean "corner area." The Examiner states that he is interpreted the corner to include at least two reinforcing posts 79, which is not the actual "corner." However, the claims also require that *a* contoured portion extends inwardly from *both* side walls. Therefore, the separate posts 79 do not constitute "*a*" contoured portion extending inwardly from the first side wall and the second side wall," as claimed.

III) Obviousness Rejection over Prior Art Figure 1**F) Claims 1-3, 32-38 and 40-43**

Appellant does not disagree that the crates in Prior Art Figure 1 were stacked and were intended to be stacked. However, these claims are not obvious or anticipated for the reasons explained above with respect to the Examiner's anticipation rejection.

IV) Obviousness Rejection over Prior Art Figure 1 in View of Wise**G) Claims 1-6, 25, 32-36, 38 and 40-43**

There is no motivation for adding the angled gussets of Wise to the crate of Prior Art Figure 1. The gussets in Wise do not provide reinforcement to an upper edge of a side wall of a container (as the Examiner states). Instead, the gussets in Wise reinforce a lip edge and lip wall that extend outwardly from the upper edge of the side wall. The crate of Prior Art Figure 1 does not include such a lip and therefore would not benefit from the gussets of Wise.

H) Claims 26 and 37

The Examiner does not even allege that Wise shows changing the thickness of the walls as required by claims 26 and 37.

I) Claims 27 and 28

The Examiner does not even allege that Wise shows "at least one portion of an upper edge is vertically aligned with at least one portion of a lower edge of the side wall," as recited in claim 27 (and required by claim 28, which depends from claim 27). This provides the ability to stack the crates, with one side wall resting upon another side wall of the lower crate. In contrast, the walls of Wise nest within one another.

J) Claim 29

The Examiner does not allege that the outer surface of the side wall of Wise is generally perpendicular to the bottom surface as recited in claim 29.

V) Obviousness Rejection over Apps '532 in View of Elvin-JensenK) Claims 8 and 31

The Examiner argues that "no radius" plus "one radius" makes a "variable radius." However, "variable" radius must mean more than one radius, while "no radius" plus "one radius" is still "one radius."

VI) Obviousness Rejection Over Apps '532 in View of Prior Art Figure 1

The Examiner still maintains that Apps '532 "discloses the entire invention" of claims 9, 11 and 47 (Page 9 of Examiner's Answer).

L) Claims 9 and 11

The Examiner has not offered any evidence of his proposed motivation for modifying the inner side wall surface at the corner to provide the claimed corner contoured portion "to reduce high stress concentration associated with non-contoured corner surfaces." (Page 9 of Examiner's Answer). The only document that identifies and addresses high stress concentration in the inner side wall corners in prior art crates is the present application.

M) Claims 45-47

The Examiner has offered no evidence of his proposed motivation to extend the drag rail of Apps '532 into the corner.

VII) Obviousness Rejection Over Apps '532 in View of Wise**N) Claims 12-15**

As explained above, Wise discloses gussets for the purpose of supporting a lip extending upwardly from a position outwardly of the periphery of the side walls. There is no such lip in Apps '532 that would benefit from this additional support.

VIII) Obviousness Rejection Over Prior Art Figure 1 in View of Elvin-Jensen**O) Claims 34 and 38**

The Examiner has still not explained why he is rejecting claims 34 and 38 under this ground. Claims 34 and 38 do not recite "a variable radius blend."

P) Claim 39

For the reasons stated above in Section V), Elvin-Jensen does not disclose a "variable radius blend." The Examiner does not allege that his proposed motivation for this modification of the Prior Art Figure 1 crate is found in the Prior Art Figure 1 crate, Elvin-Jensen or in the general knowledge of those skilled in the art.

CONCLUSION

For the above reasons, 1-15 and 25-47 are patentable. If any fees or extensions are due, please charge Deposit Account No. 50-1984.

Respectfully submitted,

Dated: February 8, 2005



Konstantine J. Diamond
Registration No. 39,657
4010 East 26th Street
Los Angeles, California 90023
Telephone: (323) 262-5145
Facsimile: (323) 269-8506